



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF B-C-K-

DATE: MAR. 16, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: FORM I-360, PETITION FOR AMERASIAN, WIDOW(ER), OR SPECIAL IMMIGRANT

The Petitioner seeks immigrant classification as an abused spouse of a U.S. citizen. *See* Immigration and Nationality Act (the Act) § 204(a)(1)(A)(iii), 8 U.S.C. § 1154(a)(1)(A)(iii). Under the Violence Against Women Act (VAWA), an abused spouse may self-petition as an immediate relative rather than remain with or rely upon an abuser to secure immigration benefits.

The Director, Vermont Service Center, denied the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant. The Director concluded that the Petitioner has not established that she entered into her marriage in good faith, resided with her spouse, and that he subjected her to battery or extreme cruelty during the marriage. The Director also determined that the Petitioner had not established that she is a person of good moral character.

The matter is now before us on appeal. On appeal, the Petitioner submits a brief and additional evidence. The Petitioner claims that she has established that she is eligible for the benefit sought.

Upon *de novo* review, we will dismiss the appeal.

I. APPLICABLE LAW

Section 204(a)(1)(A)(iii)(I) of the Act provides that an alien who is the spouse of a United States citizen may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the United States citizen spouse in good faith and that during the marriage, the alien or a child of the alien was battered or subjected to extreme cruelty perpetrated by the alien's spouse. In addition, the alien must show that he or she is eligible to be classified as an immediate relative under section 201(b)(2)(A)(i) of the Act, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(A)(iii)(II) of the Act.

Section 204(a)(1)(J) of the Act further states, in pertinent part:

In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) . . . or in making determinations under subparagraphs (C) and (D), the [Secretary of Homeland Security] shall consider any credible evidence relevant to the petition. The determination of what evidence is

credible and the weight to be given that evidence shall be within the sole discretion of the [Secretary of Homeland Security].

The eligibility requirements are explicated in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

(v) *Residence*. . . . The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser . . . in the past.

(vi) *Battery or extreme cruelty*. For the purpose of this chapter, the phrase “was battered by or was the subject of extreme cruelty” includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen . . . spouse, must have been perpetrated against the self-petitioner or the self-petitioner’s child, and must have taken place during the self-petitioner’s marriage to the abuser.

(vii) *Good moral character*. A self-petitioner will be found to lack good moral character if he or she is a person described in section 101(f) of the Act. Extenuating circumstances may be taken into account if the person has not been convicted of an offense or offenses but admits to the commission of an act or acts that could show a lack of good moral character under section 101(f) of the Act. . . . A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she . . . committed unlawful acts that adversely reflect upon his or her moral character, or was convicted or imprisoned for such acts, although the acts do not require an automatic finding of lack of good moral character. A self-petitioner’s claim of good moral character will be evaluated on a case-by-case basis, taking into account the provisions of section 101(f) of the Act and the standards of the average citizen in the community.

....

(ix) *Good faith marriage*. A spousal self-petition cannot be approved if the self-petitioner entered into the marriage to the abuser for the primary purpose of circumventing the immigration laws. A self-petition will not be denied, however, solely because the spouses are not living together and the marriage is no longer viable.

The evidentiary guidelines are further explicated in the regulation at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part:

(i) *General*. Self-petitioners are encouraged to submit primary evidence whenever possible. The Service will consider, however, any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service.

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(iii) *Residence*. One or more documents may be submitted showing that the self-petitioner and the abuser have resided together Employment records, school records, hospital or medical records, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.

(iv) *Abuse*. Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abuse victim sought safe-haven in a battered women’s shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuses may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

(v) *Good moral character*. Primary evidence of the self-petitioner’s good moral character is the self-petitioner’s affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check from each locality or state in the United States in which the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. . . . If police clearances, criminal background checks, or similar reports are not available for some or all locations, the self-petitioner may include an explanation and submit other evidence with his or her affidavit. The Service will consider other credible evidence of good moral character, such as affidavits from responsible persons who can knowledgeably attest to the self-petitioner’s good moral character.

....

(vii) *Good faith marriage*. Evidence of good faith at the time of marriage may include, but is not limited to, proof that one spouse has been listed as the other's spouse on insurance policies, property leases, income tax forms, or bank accounts; and testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. Other types of readily available evidence might include the birth certificates of children born to the abuser and the spouse; police, medical, or court documents providing information about the relationship; and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered.

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II. RELEVANT FACTS AND PROCEDURAL HISTORY

The Petitioner is a citizen of Kenya, who entered the United States on September 6, 1996, with an F-1 student visa. The Petitioner married her second spouse, S-T-¹ - a U.S. citizen, on [REDACTED] 2008, in Virginia. On October 5, 2009, S-T- filed a Form I-130, Petition for Alien Relative, on the Petitioner's behalf, and concurrently filed a Form I-485, Application to Register Permanent Residence or Adjust Status. Both immigration benefit requests were denied. On September 25, 2009, the Petitioner was placed in removal proceeding under section 240 of the Act, 8 U.S.C. § 1229a, and on [REDACTED] 2015, an immigration judge ordered the Petitioner removed to Kenya.

The Petitioner filed the instant Form I-360 on July 7, 2014. The Director subsequently issued a request for evidence (RFE) of, among other things, the Petitioner's eligibility for immigrant classification based on her marriage to S-T-, joint residence with S-T-, entry into their marriage in good faith, good moral character, and the requisite battery and/or extreme cruelty. The Petitioner timely responded with additional evidence, which the Director found insufficient to establish the Petitioner's eligibility. The Director denied the Form I-360 and the Petitioner timely appealed.

III. ANALYSIS

On appeal, the Petitioner submits two personal statements and a Complaint for Divorce filed by her husband on [REDACTED] 2015. In these letters, the Petitioner asserts that she has provided sufficient evidence to establish that she was subjected to abuse by her U.S. citizen spouse and that she married him in good-faith.

A. Joint Residence

The Director correctly determined that the Petitioner did not establish that she resided with S-T-. As proof that she shared a joint residence with S-T-, the Petitioner submitted a personal statement, letters from friends and family, a residential lease for the period of August 1, 2010, to August 31, 2011, greeting cards from friends, and photographs that she had taken with S-T-.

The Petitioner's Form I-360 reflects that she last resided with S-T- on [REDACTED] in [REDACTED] Virginia from September 2008 until September 2011. As evidence of this joint residency, the Petitioner submitted a joint lease agreement for the period of September 1, 2010, until August 31, 2011, and a letter from [REDACTED] attesting that the Petitioner and S-T- had been subleasing a place from him on [REDACTED] in [REDACTED] Virginia. In addition, the record contains the previous lease agreement with [REDACTED] naming both the Petitioner and S-T- as tenants, but signed solely by the Petitioner for a lease period beginning in December 2008 until December 2013. Additionally, the record reflects that at the same time that the Petitioner claimed to have resided in [REDACTED] Virginia, she had also signed another residential

¹ Name withheld to protect the individual's identity.

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lease agreement with the [REDACTED] to reside at their property on [REDACTED] West Virginia for a lease period of up to 24 months beginning on December 31, 2008. The Petitioner did not provide an explanation for this discrepancy.

Furthermore, the information provided on the Petitioner's Form I-360 is inconsistent with the information provided in a Form G-325A, Biographic Information sheet that she previously submitted with her Form I-485. On the Form G-325A, dated October 15, 2008, the Petitioner attested that she and S-T- resided on [REDACTED] West Virginia from January 2008 until "present", and that she resided at the [REDACTED] address from November 2005 until December 2007, prior to her marriage to S-T-. Two subsequent Form G-325A(s) reflect that the Petitioner and S-T- resided at the [REDACTED] address in [REDACTED] Virginia beginning in July 2009 not in September 2008 as the Petitioner asserted and contrary to her landlord's assertion.

The Petitioner also submitted photographs that were taken of her and S-T- and greeting cards addressed to them both. Two of the greeting cards were mailed to the Petitioner's [REDACTED] address in [REDACTED] Virginia, where she claimed to have resided from 2008 until September 2011. The other two greeting cards were mailed to the [REDACTED] address and date stamped 2009 during the same time period that the Petitioner claimed to have resided in [REDACTED] Virginia. Although, the greeting cards reflect that S-T- and the Petitioner may have periodically shared the same mailing address, they do not establish that she jointly resided with S-T-. The Petitioner also submitted a compilation of photographs of herself with S-T- and friends. They depict what appear to be the Petitioner's marriage ceremony, social gatherings and outings. The unlabeled photographs showing the Petitioner and her spouse together do not identify when and where they were taken and without probative testimony, are insufficient to establish the Petitioner's marital residence with S-T-.

Despite the deficiencies of the record, traditional forms of joint documentation are not required, and a petitioner may submit "affidavits or any other type of relevant credible evidence of residency." 8 C.F.R. § 204.2(c)(2)(iii). In her personal statement, the Petitioner generally recounted her first meeting with S-T- at a [REDACTED] Virginia. She recalled her instant attraction to him, their joint appreciation for the outdoors, and their subsequent decision to marry on [REDACTED] 2008. She also generally alluded to the claimed abuse. The Petitioner did not however describe her residence with S-T-, their shared belongings, and residential routines, or provide any other substantive information sufficient to demonstrate that she resided with S-T- after their marriage. The statements from the Petitioner's friends and family only confirm that the Petitioner and S-T- were married, but they do not establish that the Petitioner jointly resided with S-T-.

In her statements on appeal, the Petitioner does not provide any additional testimony regarding the claimed joint residence or clarifying the inconsistencies in the record. Although the record contains the Petitioner's personal statements, lease agreements and letter from the Petitioner's landlord, friends and family, they do not establish that the couple shared a joint residence, as the Petitioner did not provide substantive information about her joint residence. Likewise, the remaining testimonial evidence in the record does not demonstrate the requisite joint residence. As the inconsistencies of the residential leases diminish their probative value and the Petitioner's personal statements do not

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set forth a clear history or timeline of shared residences to clarify these inconsistencies, the Petitioner has not established by a preponderance of the evidence that she resided with S-T- after their marriage as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

B. Good-Faith Entry into the Marriage

The relevant evidence submitted below and on appeal does not demonstrate the Petitioner's entry into her marriage with S-T- in good faith. The record contains the Petitioner's statements from [REDACTED] a joint letter from the Petitioner's parents, a letter from the Petitioner's brother in-law, joint bank statements, and photographs of the Petitioner and S-T-. The bank statements show minimal transactions and do not demonstrate that the Petitioner and S-T- both used it for marital expenses. The unlabeled photographs show the Petitioner and S-T- socializing, but they do not identify when and where they were taken. Without probative testimony, the photographs are insufficient to establish the Petitioner's entry into the marriage in good faith.

In her statement provided in support of her Form I-360, the Petitioner briefly explained that she met S-T- after her [REDACTED] 2007, divorce from her previous marriage was finalized. She recounted that she met S-T- while buying gas at a [REDACTED] Virginia. She stated that she noticed a "young and good looking man," who was accompanied by his uncle, whom the Petitioner had known since 2005. The Petitioner stated that she invited S-T- to have lunch with her at the [REDACTED] restaurant in [REDACTED] that they had a "big conversation," and that he was willing to give their relationship "a shot." She recalled that he did not mind that she was older than him and that they "took it slow and got to know each other." She further stated that as a couple they liked to go hiking, visiting with friends and just spending time together. The Petitioner stated that on [REDACTED], 2008, "they felt it was the right time to get married" and had a small ceremony at the county clerk's office since most of her family and friends resided in Kenya. She recalled that after their marriage, she and S-T- spent time together traveling and sightseeing. The Petitioner did not further provide probative details about her relationship with S-T-, their courtship, wedding ceremony, shared residence and experiences to establish that she entered into the marriage with S-T- in good faith.

Similarly, letters from her friends and family did not provide sufficient details that address the Petitioner's marital intentions. [REDACTED] stated that he rented a place to the Petitioner and S-T-, and that the Petitioner had outstanding work ethics. The Petitioner's parents and brother-in-law submitted letters stating that they have fully accepted S-T- into their family. However, the text of the letters of the Petitioner's parents and her brother-in-law is repeated nearly verbatim, which detracts from their credibility as evidence of these individuals' personal knowledge of the relationship.

On appeal the Petitioner asserts that she has provided sufficient evidence to establish that she was subjected to abuse by her U.S. citizen spouse. Neither the Petitioner's statements, nor the letters from her family and friends, provide probative accounts of the couple's courtship, wedding ceremony, shared residence, or shared experiences. Accordingly, the record does not establish by a preponderance of the evidence that the Petitioner entered into the marriage in good faith as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

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C. Battery or Extreme Cruelty

The relevant evidence submitted below and on appeal does not demonstrate that the Petitioner was subjected to battery or extreme cruelty by S-T-. In support of the Form I-360, the Petitioner submitted a personal statement, her spouse's prison inmate information, and undated photographs, showing scarring to her chest. The Director found this to be insufficient and requested additional evidence of the claimed abuse but the Petitioner did not address this issue in her response to the RFE. In her personal statement, the Petitioner asserted that S-T- became "emotionally abusive and sometimes even became physical," but did not describe any specific incidents of verbal or physical abuse. The undated photographs of scarring to her chest do not indicate how this injury occurred. Without probative testimony, the photographs are insufficient to establish that the Petitioner was subjected to battery or extreme cruelty during her marriage. S-T-'s inmate information shows that he is incarcerated; however, the Petitioner has not demonstrated the connection between S-T-'s incarceration and her claims of having been subject to battery or extreme cruelty by him.

On appeal, the Petitioner submits two letters, in which she asserts that she is afraid for her life because of the choices that S-T- has made for his life. She reiterates that she was in an abusive relationship but does not further address the Director's determination that her statement lacked specific details or descriptions of the incidents of the alleged abuse. The Petitioner's letters and the other relevant evidence do not indicate that S-T-'s behavior involved psychological or sexual abuse, or otherwise constituted battery or extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi). Accordingly, the Petitioner has not established that S-T- subjected her to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

D. Good Moral Character

The regulation at 8 C.F.R. § 204.2(c)(2)(v) states that primary evidence of a Petitioner's good moral character is an affidavit from the Petitioner, accompanied by local police clearances or state-issued criminal background checks from each place the Petitioner has lived for at least six months during the three-year period immediately preceding the filing of the Form I-360 (in this case, during the period beginning in July 2011 and ending in July 2014). As proof to satisfy this requirement, the Petitioner submitted her personal statement. The Director determined that the statement was insufficient and issued an RFE advising the Petitioner that if the police clearances, criminal backgrounds checks, or similar reports are not available for some or all of the locations, to submit an explanation and other evidence to support her affidavit. The Director stated that other evidence of good moral character may include affidavits from responsible person who can knowledgeably attest to the Petitioner's good moral character. In response to the RFE, the Petitioner submitted letters from friends and co-workers attesting to her good moral character. The Director correctly determined that because the Petitioner had not submitted the required background checks or an explanation for why the clearances are not available, the Petitioner had not established her good-moral character.

On appeal, the Petitioner submits a background check, dated October 31, 2014, from the [REDACTED] Virginia Police Department reflecting she has no criminal history in the town of [REDACTED]

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Virginia. The record reflects, however, that during the requisite time period, the Petitioner also resided in [REDACTED] Virginia, [REDACTED] West Virginia, and [REDACTED] Maryland. As the Petitioner did not cover all places of the Petitioner's residence during the three-year period prior to her filing of the Form I-360,, the Petitioner has not established that she is a person of good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

IV. CONCLUSION

In visa petition proceedings, it is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. at 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of B-C-K-*, ID# 15839 (AAO Mar. 16, 2016)